

**APPENDIX A**  
**PRELIMINARY ASSESSMENT PETITION**



THE CONFEDERATED TRIBES  
OF  
THE COLVILLE RESERVATION  
POST OFFICE BOX 150-NESPELEM WASHINGTON 99155  
PHONE (509) 634-4711

August 2, 1999

Regional Administrator  
Region X  
United States Environmental Protection Agency  
1200 Sixth Avenue  
Seattle, WA 98101

Re: **Petition for Assessment of Release**

Dear Mr. Clark:

I write in my capacity as the Chair of the Business Council of the Confederated Tribes of the Colville Indian Reservation, a sovereign entity whose government is recognized by the United States. This letter is also sent to you in furtherance of the October 1996 Environmental Agreement between EPA and the Tribes.

Enclosed herein a Petition of the Tribes for a Preliminary Assessment of the hazards to public health and the environment which are associated with the release or threatened release of a hazardous substance, pollutant, or contaminant on lands which include the Reservation.

As is set out in detail in the enclosed Petition, the upper Columbia River basin has been of great importance to the Colville Tribes since time immemorial. We have always occupied and utilized this area, from below the Columbia-Okanogan confluence up into what is now Canada, and the fish, wildlife, and plant materials of the upper Columbia basin have always been of central importance to the Tribes' subsistence and culture. The



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Region X  
United States Environmental Protection Agency  
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Tribe continues to hold reserved hunting and fishing rights in lands in the North half of the historic reservation lands, including the Columbia River, which are recognized in Section I of the October 1996 Environmental Agreement between the Tribes and EPA.

This matter is extraordinarily important to the Tribe. We respectfully request that you give this matter your full and careful attention.

Very truly yours,

CONFEDERATED TRIBES OF THE  
COLVILLE INDIAN RESERVATION



Colleen Cawston  
Chair, Colville Business Council

cc: Members, Colville Business Council  
Director, Office of Environmental Trust  
Director, Office of the Reservation Attorney  
Special Environmental Counsel

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August 5, 1999

Regional Administrator  
Region X  
United States Environmental Protection Agency  
1200 Sixth Avenue  
Seattle, WA 98101

Re: Petition for Assessment of Release

Dear Mr. Clark:

We represent the Confederated Tribes of the Colville Indian Reservation (Tribes). This Petition is submitted to the U.S. Environmental Protection Agency (EPA) on behalf of the Tribes, a sovereign entity whose government is recognized by the United States, and, through the Tribes' Office of Environmental Trust. The Tribal government, and the role of Environmental Trust, has been specifically recognized in the October 1996 Environmental Agreement between the Tribes and EPA. This Petition is submitted to EPA in furtherance of the Tribal/EPA Agreement. The Office of Environmental Trust is located at Post Office Box 150, Nespelem, WA 99155, and the telephone number is (509) 634-4711.

## 1. Petitioner/Location

Pursuant to Section 105(d) of CERCLA, 42 USC §9605(d), the Tribes, Petitioner

herein, respectfully request that EPA Region X conduct a Preliminary Assessment of the hazards to public health and the environment which are associated with such release or threatened release of a hazardous substance, pollutant, or contaminant at the following location:

The Upper Columbia River Basin from the Canadian Border, southward through Lake Roosevelt, to the Grand Coulee Dam, encompassing the water, river- and lake-beds, and banks<sup>1</sup>

2. Petitioner is affected by the release

Critical tribal resources, governance processes, and inter-governmental agreements have been and continue to be affected by these releases. As repeatedly confirmed by decisions of the federal courts, the upper Columbia River basin has been of great importance to the Colville Tribes since time immemorial. Predecessors of the Colville Tribes and its members have always occupied and utilized this area, from below the Columbia-Okanogan confluence up into what is now Canada. The fish, wildlife, and plant materials of the upper Columbia basin have always been of central importance to the Colville Tribes' subsistence and culture. When the Colville Reservation was established in 1872, the entire segment of the Columbia from the Okanogan confluence to the Canadian border, roughly 150 river miles, was included within the Reservation. In 1891, the Colville Tribes ceded the North Half of the Reservation to the United States, including a portion of the Columbia, but expressly reserved hunting and fishing rights in these ceded lands, including the Columbia River. The U.S. Supreme Court affirmed these rights in a 1975 decision, *Antoine v. Washington*, 420 U.S. 194, and Section I of the October 1996 Environmental Agreement between the Colville Tribes and EPA also recognizes these rights.

Grand Coulee and Chief Joseph Dams have eliminated anadromous fish from most of the Columbia within the Colville Reservation and former North Half, but the Tribes continues to rely heavily on the anadromous fisheries between Chief Joseph Dam and the Reservation boundary five miles downstream. In addition, the Tribes has come to rely increasingly on the resident fishery and water resources above the dams, both for subsistence and recreation and for economic development in the form of tourist and recreation enterprises.

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<sup>1</sup> See Figure 1 - Lake Roosevelt and tributary waters attached as Exhibit A.

Active Tribal environmental and fishery management programs, in coordination with other management entities on the system, struggle to maintain a viable, healthy ecosystem given the past environmental damages and current management constraints. It is also important to note that there is increasing recreational use of the Lake Roosevelt system along with increased population growth. The Tribes have established a marina, houseboat rental enterprise and related business in a continuing effort to create jobs and improve the quality of life for Tribal members and the broader community. Therefore, issues about contaminants in the system that raise serious human health questions are critically important to Petitioner and all members of the local population.

### **3. Characteristics of the substances released**

Based upon information and belief, Petitioner asserts that the following hazardous substances have impacted the study area and should be included in the Assessment process:

3.1 metals (arsenic, cadmium, copper, lead, mercury, and zinc); primary source of the contamination appears to be a lead-zinc smelter on the Columbia River in British Columbia but may also come from the Spokane River<sup>2</sup>

3.2 blast furnace slag from Canadian smelters as well as from the LeRoi (Northport) Smelter site in Northport, Washington<sup>3</sup>

3.3 organochlorine compounds (dioxins, furans, and PCBs) believed to have originated from a pulp mill near Castlegar, British Columbia<sup>4</sup>

3.4 wood-pulp waste, urban runoff, and discharges from industrial activities<sup>5</sup>

3.5 contaminants released into the Upper Columbia from historic and

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<sup>2</sup> See Exhibit A at 12.

<sup>3</sup> *Id.* at 12 and 14.

<sup>4</sup> *Id.* at 13.

<sup>5</sup> See Exhibit A generally.

ongoing mining operations in the region<sup>6</sup>

3.6 contaminated fugitive dust caused by exposed sediments resulting from drawdowns of Lake Roosevelt

4. Activities contributing to the releases.

4.1 In the early 1980s, concerns about water quality in Lake Roosevelt and the upper Columbia River were first reported in a U.S. Fish and Wildlife study that reported elevated concentrations of arsenic, cadmium, lead, and zinc in fish. Follow up studies identified the primary source of the contamination to be a lead-zinc smelter on the Columbia River in British Columbia, 16 km upstream from the international boundary. Since the 1950s, the subject smelter had discharged several hundred tons of blast furnace slag and effluent per day into the Columbia River.

4.2 At the request of the U.S. Environmental Protection Agency (EPA) and Lake Roosevelt Water Quality Council (LRWQC), the U.S. Geological Survey (USGS) initiated a large-scale sediment quality study in 1992. The USGS reported that bed sediments were contaminated, as indicated by elevated concentrations of metals (arsenic, cadmium, copper, lead, mercury, and zinc), laboratory toxicity, and altered benthic invertebrate communities. In addition, a 1994 USGS study determined that mercury in sportfish was elevated to levels high enough to trigger a Washington Department of Health consumption advisory.

4.3 Due in part to the studies in Canada and Washington state, the subject lead/zinc smelter in Canada has apparently stopped discharging slag and has reduced its effluent discharge. While this is a significant improvement in the loadings of metals to the system, *large quantities of contaminated sediments remain in Lake Roosevelt*, and therefore studies are still in progress. For example, Petitioner is currently funding a USGS study to determine if the level of mercury found in the tissue of Walleye Pike has decreased since the 1994 study. In addition, the EPA is presently funding a USGS study in the Coeur d'Alene and Spokane River Basins as part of a Natural Resources Damage Assessment (NRDA) of the Coeur d'Alene system. The primary objective of that study is to determine the relative contribution of metals to the Spokane River from the Lake Coeur d'Alene system.

4.4 While metals have received the most attention, organochlorine compounds, due to their persistence and established role in causing adverse environmental effects are also of concern. Human health effects of organochlorine compounds are controversial. The particular organochlorine of concern are dioxins, furans, and PCBs. In 1988 and 1990, Canadian studies reported large concentrations of furans in fish collected in the Columbia River downstream of a pulp mill near Castlegar, British Columbia. The Washington state Department of Ecology (Ecology) confirmed that fish from Lake Roosevelt contained elevated furan concentrations, but that concentrations of dioxins and furans generally decreased as one moves downstream away from Canada.

4.5 In a 1992 study, the USGS reported that dioxins and furans were present in suspended sediment collected from the Columbia River, but only a few of the 17 targeted isomers were detected. The form of dioxins most toxic to some laboratory animals was not detected. Aside from dioxins and furans, few of the many other organic compounds associated with wood-pulp waste, urban runoff, and industrial activities were detected in the bed sediments of Lake Roosevelt and its major tributaries.

4.6 There is generally less known about PCBs than about the dioxin and furan compounds. In 1993-94, Ecology reported that PCBs were detected in most fish samples from the Spokane River, and that concentration were highest in fish collected from the Spokane River above Spokane, but below the Idaho border. New data developed by EPA and other agencies indicates that heavy metals may also present risks to Lake Roosevelt and that further study of the risk of adverse impact to human health is needed. In general, there needs to be more study regarding how contamination sources located on the Spokane Indian Reservation may have impacted the Colville Reservation. In 1994, the EPA funded a study to determine the potential human health risks posed by concentrations of dioxins, furans, and PCBs in species of fish collected and consumed by people throughout Lake Roosevelt. That study did find that dioxins and furans were present in fish, but that concentrations did not differ from the upper Columbia River to the Grand Coulee Dam. There has been no human health statements released from the EPA PCB study.

4.7 In a current follow-up study, the USGS is presently determining if organochlorine compounds, including both dioxins and furans, and PCBs, have decreased in sportfish filets since the EPA study four years ago. This study was requested by the Lake Roosevelt Water Quality Council and Colville Confederated Tribes; the Spokane Tribe collected the fish as part of a joint (Colville Tribes, Spokane Tribe, Washington



Department of Fish and Wildlife) fisheries monitoring program in Lake Roosevelt.

4.8 The EPA performed a site inspection of the LeRoi Smelter site in 1993. The SI sampled only on-site surface soils, surface soils of an adjacent city park, and off-site (background) surface soils (a total of only 4 sampling sites) to gather data to evaluate potential soil problems associated with previous smelting operations on site. The sampling revealed that arsenic, antimony, lead and copper were detected on site at significant concentrations (exceeding Washington State Model Toxics Control Act Method B soil cleanup levels). Arsenic and copper were also detected at a significant level off site in the adjacent city park. No sampling of groundwater was conducted, nor was the site assessed with regard to the suspected release or threatened release of a hazardous substance, pollutant, or contaminant on site or from the site into the Columbia River or to groundwater. The report recommended further investigation of the site to evaluate any possible exposure via the air or soil pathway, but no additional investigation has occurred to date.

## **5. Governmental officials contacted about the releases**

5.1 The Tribe has contacted: Chuck Rice and Elizabeth McKenna from the *United States Environmental Protection Agency*; Tony Grover, Carl Nuechterlein, David Knight, Guy Gregory, Bill Fees, and Flora Goldstein from the *Washington State Department of Ecology*; Tanya Barnett and Fritz Clarke from the *Washington Office of the Attorney General*; Mark Munn and Cindi Barton of the *United States Geological Survey*; Mary Verner Moore from the *Spokane Tribe of Indians*; and Congressman George Nethercutt from the *United States House of Representatives*.

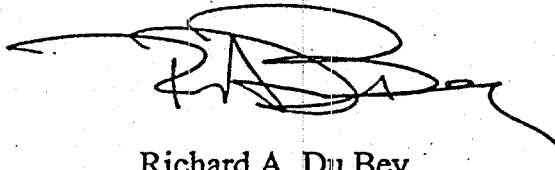
5.2 The response from the State of Washington has been that Ecology recognizes that LeRoi is ranked as a No. 1 (most serious) on the State Hazardous Substances List. Ecology has conducted phase I of an assessment for remediation and had intended to undertake phase II work involving well-drilling and a sediment study in 1999. However, phase II of the remediation plan never occurred because Ecology did not have sufficient funds in its 1999 budget. Furthermore, Ecology has not considered the cumulative impact of the site in relation to the contribution by other sources to contamination of the Columbia River basin and Lake Roosevelt.

6. Request for Preliminary Assessment

In light of the foregoing, Petitioner herein, by and through the office of Environmental Trust respectfully request that EPA Region X undertake timely review of this matter and initiate the preliminary assessment of the releases described above. Please be advised that the Tribes would like to meet with you to review this Petition and discuss how EPA and the Tribes may work together to protect the Upper Columbia River environment.

Respectfully submitted this 6<sup>th</sup> day of August, 1999 by:

SHORT CRESSMAN & BURGESS PLLC



Richard A. Du Bey  
Special Environmental Counsel to the  
Confederated Tribes of the Colville Reservation

RAD:vh

cc: Members, Colville Business Council  
Director, Office of Environmental Trust  
Director, Water Quality Management  
Director, Office of the Reservation Attorney  
Elizabeth McKenna, EPA, ORC  
Chuck Rice, EPA  
Richard McAllister, EPA, ORC  
Tony Grover, Department of Ecology  
Tanya Barnett, Office of the Attorney General  
Guy Gregory, Department of Ecology  
Cindi Barton, USGS  
Mary Verner Moore, Spokane Tribe of Indians  
Congressman George Nethercutt

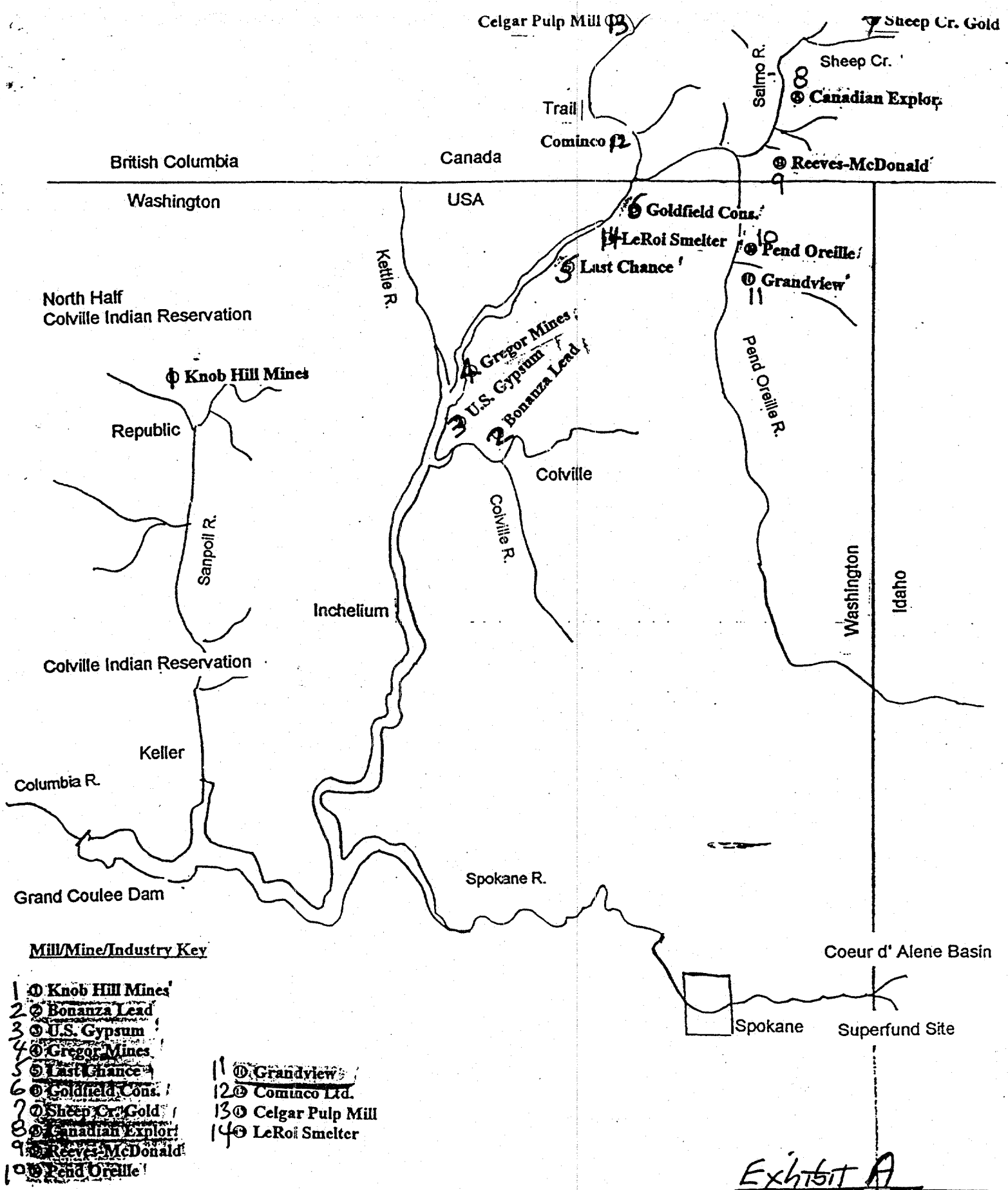


Figure 1 Lake Roosevelt and Tributary Rivers

Lead (Pb)-Zinc (Zn) Mining/Milling Operations with Discharges into Lake Roosevelt & Upper Columbia

Mill	Company	Location	Yrs. of Oper.	1950 Prod. Rate	Planned Prod. Rate (TPD -- Tons Per Day)	Effluent Notes	River
Josephine	Pend Oreille Mines and Metals Co.	Metalline Falls	1950	500 TPD	2400 TPD -- at new mill across the river (same company)	500,000 gal. per day 20-25% solids by weight 0.37 % Zn, trace of Pb	Pend Oreille River (via Flume Creek)
Grandview Mill	American Zinc, Lead and Smelting Co.	Metalline Falls	1950	700 TPD		490,000 gal. per day discharged direct to river via flume 0.3% Zn, 0.1% Pb	Pend Oreille River
Reeves-McDonald Mine	Pend Oreille Mines and Metals Co.	Brit. Col., a few miles north of border	1950	700 TPD	1000 TPD	Discharged direct to river; 0.5 % Zn, trace of Pb	Pend Oreille River
Bonanza Lead	Bonanza Lead Co.	Palmer's	1950	80 TPD	150 TPD	no direct discharge, possibility of cyanide leaching	Colville River
	Gregor Mines, Inc.	Bossburg	1949	100 TPD		direct discharge of overflow	Lake Roosevelt
	Golfeld Consolidated Mines Co.	above Northport	1949	225 TPD		drainage	Columbia River
	Last Chance Consolidated Mines, Inc.	below Northport	1949	60 TPD		drainage	Columbia River

Exhibit B

**Volume of Wastes Discharged to Pend Oreille River  
by Lead-Zinc Mills in NE Washington and British Columbia**

Name of Mill/Mine	Discharge Volume (in gallons)
Josephine (1941-1950)	1.5 billion
Josephine II (1951-1960)	3.6 billion
Grandview (1941-1960)	2.9 billion
Reeves-McDonald (1941-1960)	3.6 billion

The combined total is 11.6 billion and would be enough to fill approximately 1,300 Kingdomes.

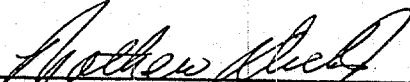
## R E S O L U T I O N

WHEREAS, it is the recommendation of the Natural Resources Committee to approve the attached proposed agreement between the Colville Confederated Tribes and U. S. EPA, and authorization that Chairman execute on behalf of the Tribes in connection with meeting with EPA region x administration on October 29, 1996 in Seattle. Agreement may enable tribes to qualify for additional funding in FY 97 (but does not guarantee any such funding). Agreement also promotes government to government relationship between CCT and EPA. Agreement recommended by Environmental Trust and Tribal Attorney.

THEREFORE, BE IT RESOLVED, that we, the Colville Business Council by authority delegated in Resolution 1991-431, this 28th day of OCTOBER, 1996, do hereby approve the recommendation of the Natural Resources Committee of the Business Council.

The foregoing was duly enacted by the Colville Business Council by a vote of 10 FOR 0 AGAINST, under authority contained in Article V, Section 1(a) of the Constitution of the Confederated Tribes of the Colville Reservation, ratified by the Colville Indians on February 26, 1938, and approved by the Commissioner of Indian Affairs on April 19, 1938.

ATTEST:

  
Joseph A. Pakootas, Chairman  
Colville Business Council

cc: Deb Louie, Chairman, Natural Resources Com.  
Gary Passmore, Environmental Trust  
Alan Stay, Tribal Attorney  
Kathy Desautel, Financial Officer

**ENVIRONMENTAL AGREEMENT  
BETWEEN THE  
ENVIRONMENTAL PROTECTION AGENCY, REGION 10  
AND THE  
CONFEDERATED TRIBES OF THE COLVILLE RESERVATION**

**I. PARTIES TO THE AGREEMENT AND ROLES**

This Agreement reflects and affirms the government-to-government relationship between the United States of America and the Confederated Tribes of the Colville Reservation.

The Parties to this Tribal Environmental Agreement (hereinafter referred to as the "Agreement") are the Confederated Tribes of the Colville Reservation (hereinafter referred to as "Tribes"), represented by the Chairman of the Colville Business Council, and the United States Environmental Protection Agency (EPA), represented by the EPA Region 10 Regional Administrator.

The U.S. Environmental Protection Agency was created to provide coordinated and effective governmental action to assure the protection of the environment by abating and controlling pollution on a systematic basis.

Environmental Protection Agency, Region 10, is responsible for the execution of the Agency's programs within the boundaries of Alaska, Idaho, Oregon, and Washington.

The Parties recognize that the Colville Reservation established by Executive Order in 1872 is the permanent homeland of the Tribes and its members. The parties further recognize that the Tribes retains significant rights in the so-called North Half of the Reservation, which was ceded to the United States by an 1981 agreement reserving hunting and fishing rights for the Tribes and its members. The parties also recognize that the Tribes and its members owns lands, some of which are held in trust by the United States, outside the Reservation, both within the North Half and in other locations near the Reservation.

The parties further recognize that the Tribes possesses inherent sovereign authority to regulate environmental and natural resources matters within the Reservation, and that the Tribes desires to establish the scope of its authority over lands within the Reservation not owned by the Tribes.

This Agreement identifies the respective roles and governmental responsibilities of the Tribe and EPA for planning and undertaking environmental protection activities. The Tribe and EPA enter into this Agreement in order to ensure that tribal jurisdiction is preserved and protected, and furthermore, that the Tribe has substantial and meaningful involvement in environmental policy decisions impacting its Reservation, tribal members and tribal resources.

The Parties expect that the improved coordination that will result from this Agreement will maximize effective protection of the Tribe's environment and the fulfillment of the EPA's legislative mandate and trust responsibilities to the Tribe.

In furtherance of the expectations of the Parties, the following declarations are made and agreed to:

1. Pursuant to federal Indian law and policy, the Tribe is the government with primary jurisdiction and stewardship for its members and resources, and the Tribe has the right to a substantial and meaningful role in protecting the environment of its homeland.

2. The EPA is the federal agency with the primary responsibility for the protection of the environment in and of the United States. The EPA has a trust responsibility to use its legal authority to assist in the protection of the Tribal environment and the sovereignty of tribal government. The EPA is committed to assisting the Tribe in its development and implementation of an environmental protection and regulatory program which is consistent with EPA's regulatory authority.

## **II. VISION STATEMENT**

### **A. Tribal Three Part Goal**

The Tribes' strategic planning process is based on a 3-part holistic goal. Environmental programs on the reservation pursue their mission in accordance with this 3-part goal:

#### **1. Quality of Life:**

We want to maintain and build upon our unique culture, traditions, language, sovereignty and history; we want a healthy society, environment and economy; we will treat everyone with honor and respect, having the freedom to worship, live, work and play as we choose, accepting each Others diversity/uniqueness. We want to provide plentiful/affordable housing, meaningful/secure employment and educational opportunities. We want communities that are clean, self-sufficient, safe, wholesome and provide opportunities for family based recreation.

#### **2. Forms of Production:**

We will support our quality of life through sustainable wealth from diverse income opportunities, without waste or sacrifice of tradition, culture and values; we will emphasize the importance of involving the membership in developing their communities; we will provide opportunities/infrastructure to increase understanding/awareness of our culture, traditions, language, sovereignty and history throughout our communities, schools and workplaces, continuously promoting honor, respect and diversity.



### 3. Future Resource Base:

We are and continue to be a self-sustaining sovereign entity, having flourishing enterprises, having healthy productive landscapes including rangelands, croplands, forests, riparian areas, streams and lakes, tribal decisions will include protection of tradition, culture, and aesthetic values; we will continue to provide improved/enhanced opportunities to communities/schools/workplace to increase understanding and awareness of our culture, values, tradition, language, sovereignty and history.

The reservation remains as a rural lifestyle and the population is in balance with an effective water, mineral, and energy cycle with bio-diversity resulting in an abundance of culture, medicinal and edible plants, clean air and water, springs and streams that flow year round, large trees, wildlife, fish and insects.

### **B. EPA National Guidance**

#### 1. The EPA "Indian Policy"

The EPA Policy for the Administration of Environmental Programs on Indian Reservations sets forth nine principles by which the EPA will pursue its objective. Among the principles are a commitment to work with tribes on a government-to-government basis, to recognize tribes as the primary decision makers for environmental matters on reservation lands, to help tribes assume program responsibility for reservations, to remove existing legal and procedural impediments to tribal environmental programs, and to encourage tribal, state, and local government cooperation in areas of mutual concern. The Policy has been reaffirmed by every administrator since its adoption, most recently by Administrator Carol Browner in 1994.

EPA's relationship with the Tribes is intended to be in accordance with its Indian and tribal policies first set forth in 1983 which emphasize respect for tribal rights to self government and self determination, a commitment to a co-equal government-to-government relationship, support and advocacy in behalf of tribal jurisdiction, and a recognition of the unique trust responsibility of the United States on behalf of Indian Tribes.

#### 2. Government-to-Government Memorandum of 4/29/94.

President Clinton outlined principles intended to ensure that the federal government operates within a government-to-government relationship with federally recognized tribes in a manner which is "always respectful of tribal sovereignty."

#### 3. Environmental Justice, Exec. Order #12898, 2/11/94.

As a result of the Order, Administrator Browner convened an interagency Federal Working Group and established the National Environmental Justice Advisory Council, including tribal government representatives.

4. Reinventing Environmental Regulations, 3/16/95.

President Clinton and Vice-President Gore recognize as a principle of reinventing environmental protection that federal, state, tribal and local government must work as partners to achieve common environmental goals, with non-federal partners taking the lead when appropriate.

5. Congressional Recognition of Tribal Role.

Congress has amended the Safe Drinking Water Act, Comprehensive Environmental Response, Compensation and Liability Act, Clean Air Act, and Clean Water Act to clarify the role of tribal governments and enhance their ability to participate in the federal environmental regulatory scheme.

6. EPA's Administrative Support of Congress' Intent.

Consistent with its Indian Policy, the EPA has pursued its goal to eliminate statutory and regulatory barriers to the assumption of federal environmental programs by Indian tribes, including the amendment of environmental laws to include tribes. EPA has utilized its administrative authority under Resource Conservation and Recovery Act, the Federal Insecticide, Fungicide, and Rodenticide Act, and the Emergency Community Preparedness Right to know Act to include tribes as appropriate authorities even where an Act has been silent on the role of tribal governments.

### **III. OBJECTIVES**

The Parties enter into this Agreement to accomplish the following objectives:

**A. To Establish a Mechanism for Environmental Protection.**

This Agreement is intended to establish a mechanism for determining the specific environmental priorities for the Colville Confederated Tribes, to identify the regulatory areas under the federal environmental laws for which the Tribes desire primacy, and to plan how all aspects of the reservation environment can be protected.

This Agreement shall form the basis for communication and programmatic assistance to the Tribe by the EPA. Program staff will provide assistance to the Tribe in accordance with the government-to-government relationship between the Parties, and as specified by the Specific Work plan attached to this Agreement.

**B. To Implement the Government-to-Government Relationship.**

This Agreement will provide a mechanism for implementing the government-to-government relationship by clarifying the roles, responsibilities, and relationships of EPA and the Tribe.

### **C. To Build Tribal Capacity**

This Agreement is intended to build Tribal environmental capacity so that the Tribe will be able to develop and implement an on-going environmental program. To the extent practical, given resource limitations, the EPA will provide training and information-sharing workshops for Tribal staff and Tribal government to build Tribal capacity and encourage the operation and management of Tribal programs by Tribal people.

### **D. To Provide Support for Tribal Regulatory Processes**

This Agreement will provide support for the development and implementation of regulatory processes which will strengthen the ability of the Tribe to protect its cultural, religious and spiritual resources as it protects its environment.

### **E. To Build Tribal Environmental Programs**

This Agreement will facilitate support for Tribal development of an environmental program, regulatory and otherwise, that will protect, conserve, and restore the reservation environment and the health of its citizens. This Agreement will also provide a mechanism for the effective enforcement of and compliance with federal and Tribal environmental laws.

### **F. To Institute Specific Procedures**

This Agreement will provide a mechanism for the enhancement of communication, funding, technical assistance, training, capacity building, administration and the periodic reevaluation of this Agreement.

### **G. To Promote Stability**

This Agreement shall be implemented to promote Tribal stability in funding, employment, capacity building, infrastructure development and other factors that assure acceptable levels of environmental protection on the reservation in perpetuity.

### **H. Long-Term Goals**

This Agreement has been developed with the understanding that the long-term goal is to address, implement and maintain, where deemed necessary by the Tribes, the full range of EPA's activities and programs.

### **I. To Address the EPA Trust Responsibility**

This Agreement will be used to identify procedures by which the EPA can uphold its federal trust responsibility to the Tribes, to protect both the environment of the reservation and to protect

other lands and rights which the Tribes retain. In addition, such procedures shall be the basis for assistance by EPA in communicating trust responsibility concerns to other agencies whose activities affect the rights and interests of the Colville Tribes.

**J. To Ensure that Unique Tribal Concerns are Respected**

This Agreement is intended to provide a framework for environmental protection which is respectful of Tribal cultural concerns, subsistence activities, traditional practices and resource protection. This Agreement will assist EPA and Tribal staff in assessing and providing an understanding of Tribal environmental needs and identify the areas under which the Tribe intends to assume program responsibility.

**K. Provide a Flexible, Common-Sense Tool for Tribal Environmental Protection**

This Agreement is intended to provide maximum flexibility so that Tribal specific needs can be accommodated. It should be interpreted as a flexible document that can be changed to meet Tribal environmental needs.

EPA will in a timely manner notify the Tribes of all revisions in EPA policies and regulations that may result in an impact to the Tribe will be communicated to the Tribe in a timely manner. The Parties will work together to utilize the policies and regulations in a manner which will most effectively facilitate the protection of the Tribe's environment in a manner consistent with the government-to-government relationship. To that end, this Agreement will be revisited periodically to keep it current with current legislation and regulations, expand flexibility into the future, and review the progress in using the provisions of the Agreement to provide a flexible, common-sense tool for Tribal environmental protection.

**L. To Address a Full Range of Environmental Programs**

This Agreement will provide the framework for the cooperative development, implementation, and maintenance of comprehensive Tribal environmental programs. EPA and Tribal staff are encouraged to identify all aspects of environmental protection that the Tribes may pursue to enhance its capacity to protect the Tribes' environment.

**M. EPA Planning**

This Agreement will assist the EPA in identifying areas where EPA will need to plan for and carry out direct implementation. This Agreement will provide a mechanism for including Tribal concerns in EPA planning. The EPA Tribal Office will coordinate efforts to involve the Tribe in EPA planning activities.

#### **IV. GUIDING PRINCIPLES**

As these Agreements are developed, all principles included in the EPA's Indian Policy shall apply. These principles include recognition of the trust responsibility for environmental protection, the government-to-government relationship, and Tribal sovereignty.

##### **A. Protocol**

The government-to-government relationship shall be directly between the EPA and the Tribes. Grants, contracts, and official agreements between the two entities must be signed by Chairman of the Colville Business Council, or otherwise approved in accordance with tribal law, to commit the tribe to any official action or financial/performance requirement.

Training and technical assistance services for the Tribes by EPA will be initiated by initially contacting the Director of Environmental Trust or a delegated individual.

EPA will coordinate with the Tribes when entering the Reservation for the purposes of conducting enforcement activities and providing compliance and technical assistance. EPA will use its best efforts to notify the Director of the Tribes' Environmental Trust Department of enforcement inspections and investigations that take place on the Reservation. EPA will endeavor to afford tribal environmental officials an opportunity to accompany EPA officials on visits to facilities for inspections and investigations, and for compliance and technical assistance.

##### **B. Communication**

While implementing the Agreement, the EPA and the Tribe are committed to on-going, timely and open communication. EPA commits to providing timely advice on available grants and other sources of available funding, training and on-going meetings that affect Tribes. This also includes a timely transfer of state of the art technology as the Tribe seeks to build capacity. The Tribe commits to the identification of issues and problems at early stages of development in order to provide time to plan potential resolutions that EPA may be able to support or implement (or assist in implementing) in furtherance of this Agreement.

##### **C. Environmental Justice**

The principles of environmental justice shall apply to this Agreement. In general, these principles call for the EPA to assure that Tribes at a minimum are afforded all of the opportunities afforded States, including procedures for Tribal participation in EPA decision making. The unique aspects of tribal sovereignty and the federal trust responsibility may require that the Tribes be entitled to special opportunities as well. In addition, environmental justice principles call for a recognition of Tribal cultural concerns such as subsistence needs and traditional uses of natural resources.

## **V. TRIBAL AND EPA COORDINATION**

### **A. Information Sharing**

The parties agree to share information relating to their activities or decision-making that may directly or indirectly impact the environment of the Tribes. The Parties also agree that, to the extent possible, they will share information pertaining to impacts on the Tribal environment or Tribal resources.

### **B. Development of EPA Coordination Process**

The Parties agree to maintain coordination efforts. Parties will communicate issues and concerns regarding the work that is required to coordinate efforts to protect the environment of the Tribes.

### **C. Planning**

The Parties will use the partnership established herein to jointly plan and implement a strategy for effective environmental programs on the Reservation that are consistent with the general Goals and Objectives of the Agreement. Specific actions and time lines will be set forth in Appendix I to this agreement entitled "Action Plan."

#### **1. Planning and Budget Cycles**

For the purposes of this Agreement the Tribe, in coordination with the EPA, will identify the following:

- a. EPA Resources Needed. The Parties will cooperatively identify resources needed from EPA.
- b. Grant Schedule Information. EPA will identify and submit to the Tribe a schedule for submitting grant applications, and other such planning information.
- c. Progress Toward Stable Funding. The Parties will seek to identify how stable sources of funding will be provided, including resources from EPA and from the Tribe. Project specific funding can be used to get started, but sources of long-term program implementation funding sources should be identified.
- d. Linkage Between Short- and Long-Term Funding. The Tribe will attempt to explain in detail the linkage between long- terms goals and short-term resource needs so that the EPA can pursue adequate resources to assist with these longer-term objectives, without focusing on the year-to-year fluctuations to the budget.

e. Updated Information for National Budget Development. Updated key information for national budget development on rolling schedules should be submitted annually based on the Agreement, while maintaining key activities that lead to fulfillment of longer term goals.

## **2. Other Planning Considerations**

To achieve a well-informed plan relating to community health and environmental quality, the parties may consider infrastructure issues such as housing, utility and energy development, road-building, transportation and community sanitation. Where both the State and EPA are engaged in such infrastructure changes, the EPA agrees to initiate and/or facilitate discussion as to the potential impacts the project will have on the Tribes, its members and residents, or its resources.

### **D. Visits by EPA Staff**

To enhance coordination and the parties' working relationship, and to develop and implement the Work Plan, EPA agrees to meet with representatives of the tribal government or tribal staff at least once a year. The visits may focus on any or all of the objectives of this Agreement, including collateral activities consistent and supportive of this Agreement.

### **E. Legislation**

To the extent permitted by law and possible by timeliness, EPA agrees to solicit Tribal comments on proposed legislation and regulatory activity which may impact the Tribe. The intent is to provide the Tribe with an opportunity to comment on legislation that may impact it and its ability to protect the Tribal environment.

## **VI. ENVIRONMENTAL COMPLIANCE**

### **A. Compliance Education**

EPA will design an educational program and educational information to promote environmental compliance on the Colville Indian Reservation, with respect to activities of the Tribes and its entities and other persons and entities that affect the environment and may be subject to federal or tribal environmental laws. The following will be addressed:

#### **1. Tribal Participation and Comment**

Invite Tribal participation and comment in the development of environmental legislation and regulations affecting the Tribe.

## **2. Existing Requirements**

Inform the Tribe of existing environmental requirements, as stated in applicable laws and regulations.

## **3. Advice to Attain Compliance**

Advise and explain to the Tribe how to effectively achieve compliance in non-compliance situations.

## **4. Recognize Barriers to Compliance**

Recognize when compliance may be delayed, and work to assure that public and environmental health risks are minimized until compliance is achieved.

## **B. Technical Assistance in Developing Tribal Policies and Regulations**

EPA will provide technical assistance and/or written models to the Tribe to assist in the preparation and adoption of environmental policies and ordinances which are congruent with applicable federal laws.

## **C. Assistance in Identifying and Prioritizing Compliance Problems**

EPA and the Tribe will work jointly to identify and prioritize non-compliance situations in the Colville Indian Reservation. An inventory of noncompliance issues will be developed each year after input from the Parties. Together, the Parties will decide upon strategies for correction, and include the correction strategy in the environmental Action Plan for the applicable area, along with a time line. EPA will coordinate with the Tribes if a federal enforcement response is planned for a non-compliance situation involving a private party. The Parties shall periodically re-evaluate the selected strategy, and their progress.

## **VII. TRIBAL CAPACITY-BUILDING**

EPA recognizes that in order to achieve the Tribes' three part holistic goal environmental protection programs on the Colville Indian Reservation must in time be melded into a holistic, integrated program that reflects the values of the Tribes and meets or exceeds federal standards; recognizing that nature, unlike environmental laws and regulations, is not compartmentalized into discrete and independent parts.

The Tribes recognize that by embarking on this agreement process that they will be working with EPA to pioneer unique ways of protecting the environment, ways that do not necessarily fit the "state model" or discrete environmental media program model.



EPA agrees to assist the Tribe in building its capacity and capability to assume responsibilities that are identified as priorities for the Tribal government through this Agreement. Until the Tribe is capable of assuming full programs or programs requiring EPA approval, EPA will retain responsibility for managing federal environmental programs in the Colville Indian Reservation.

#### **A. Definition**

This Agreement is intended to build Tribal environmental capacity so that the Tribe will be able to develop and implement on-going environmental programs. Tribal Capacity Building is the process of working through Tribal government to build tribally-controlled community programs which meet the needs of Tribal members and achieve the Tribes' 3-part goal. Tribal Capacity Building promotes Self-Determination by encouraging the development, implementation and operation of Tribal programs by the Tribes' government. Tribal Capacity Building will reduce reliance on federal program implementation and oversight. Under this Agreement, Tribal Capacity Building includes the development of environmental management capability. Management capability is composed of three primary components: technical/managerial, education/communication, and environmental monitoring.

#### **B. Guiding Principles for Capacity Building**

##### **1. Technical and Fiscal Resource Commitment**

EPA will support the Tribes' Tribal Capacity Building through the dedication of EPA human and fiscal resources (to the extent such resources are available or can be allocated), and through the adoption of policies and regulations which support Tribal Capacity Building. EPA will work with the Tribe and other federal agencies to identify long-term financial support for the implementation of Tribal environmental programs.

##### **2. Cross-Cultural Training**

EPA will support and implement cross-cultural training for its staff, to facilitate understanding tribal culture, goals, and values. The Tribes agrees to provide information and, to the extent feasible, technical assistance which will help EPA staff understand the unique history, circumstances and perspectives of the Tribe. This training is intended to enhance communication and cooperation between the Tribe and EPA staff and management. EPA will also develop a training module which will assist the Tribal government and staff in understanding the institutional culture of the EPA.

##### **3. Management Training**

Subject to available resources, EPA will develop and implement an administration and management training module which will assist Tribes in understanding the expectations and requirements of EPA for such purposes as grant development and application, financial management systems, grants compliance and reporting, program authorization requirements and other areas

necessary to Tribal capacity building and success.

#### **4. Commitment to Notification of Regulation Changes**

EPA will provide the Tribe with proposed and final rules or regulations, as well as other documents, which pertain to Tribal environmental programs, or which are requested by the Tribes. EPA will assist the Tribes in conducting impact assessments of new or revised regulations, and in reviewing potential funding and assistance resources made available by EPA.

### **VIII. ADMINISTRATION OF AGREEMENT**

#### **A. Setting Priorities**

On an annual basis, the Tribe will identify specific environmental priorities for the Reservation. The Parties will be guided by the following procedures.

##### **1. Tribal Environmental Information Gathering**

With technical assistance from EPA, the Tribes will gather information about Tribal environmental concerns. A focus of the information gathering will be to distinguish between environmental concerns being effectively addressed and those that need further emphasis in order to minimize current and/or future risks.

##### **2. Tribal Assessment of Priorities**

Based on the annual environmental review, the Tribe will determine which environmental concerns call for emphasis. The Tribe may also identify Tribal priorities for programs which it would like the EPA to implement on the Reservation.

##### **3. Joint Review of Tribal Information and Priorities**

The Tribe will communicate with EPA regarding the Tribe's identified priorities. The Parties will jointly review the priorities and identify a program implementation strategy. Both short and long-term action plans will be revisited or developed.

##### **4. Plan for Attaining Priorities**

As part of establishing priorities, the Parties will develop a plan for attaining each priority, which may include goals, tasks, responsibilities, and timelines for each specific matter. In addition, the Parties will jointly identify potential short-term and long-term funding sources.

## **5. Progress Milestones**

The priorities and the identified progress milestones will be evaluated annually by staffs of EPA and the Tribes, and will be presented to managers of EPA and the Tribes at the annual review of this Agreement.

### **B. Implementation**

The Parties concur that this Agreement provides a framework for each Party to act individually under its authorities, and in concert with the other Party, to meet the goals and objectives identified above.

#### **1. Roles and Responsibilities of EPA.**

EPA will, within available resource constraints:

a. Implement the EPA National Indian Policy and the policies of EPA Region 10.  
EPA will take other actions in accordance with formal EPA policy, guidance and direction, with due consideration of the Tribes' views.

b. Protect the Tribal environment  
EPA will protect the Tribal environment to the same degree as the non-Tribal environment, including spiritual and cultural sites, by ensuring effective implementation and enforcement of regulatory programs that meet or exceed applicable tribal, state and federal standards.

c. Retain EPA Jurisdiction on the Reservation  
EPA will retain jurisdiction on the reservation for those federal environmental program components which are not either delegated to the Tribes or otherwise implemented by the Tribes.

d. Provide the Tribe with proposed and final Regulations  
EPA will provide the Tribes with proposed and final regulations and policies, as well as other documents which are available to the general public, which pertain specifically to tribal environmental programs, or which are otherwise requested by the Tribes.

e. Provide Technical and Other Assistance to the Tribe  
EPA will assist the Tribes in conducting: i) reservation environmental program needs assessments, ii) an impact assessment of new or revised regulations; iii) a priority assessment of existing and new program requirements; and iv) a review of potential funding and technical assistance sources.

**f. Cross-Cultural Training**

EPA will provide cross-cultural and trust responsibility training opportunities for EPA staff and managers, with the assistance of the Tribes on request.

**g. Participation in Ecosystem/Watershed Protection**

EPA will assist and coordinate with the Tribes in the development of an ecosystem/watershed approach to environmental protection based on the Tribes' 3-part goal.

**h. EPA Administrative & Management Training**

EPA will provide training to facilitate the Tribes' understanding of the various EPA program administrative and management requirements.

**2. Roles and Responsibilities of the Tribes.**

The Tribes will, within available resource constraints:

**a. Identify Tribal Priorities**

The Tribes will identify the Tribe's specific environmental priorities.

**b. Implement a Primacy Strategy**

The Tribes will, to the extent reasonable for its circumstances, implement a strategy to achieve primacy for certain regulatory programs. As part of that strategy, the Tribes will work with EPA and other federal agencies to build the capacity of the Tribes to enforce and assure compliance with all necessary federal and Tribal environmental laws, regulations, and programs.

**c. Assist EPA with Programs**

The Tribes will assist in the implementation of those programs for which EPA retains the lead, and cooperate with EPA's efforts to enforce and assure compliance with all federal environmental regulations.

**d. Identify Alternative Funding Options**

The Tribes will explore and identify options for long-term funding, including an analysis of program fees, excise taxes and fines as a source of program funding.

**e. Identify Tribal EPA Contacts**

The Tribes agrees to identify a Tribal government representative and/or Tribal staff who will be responsible for receiving and distributing EPA notices, including requests for comment.

**f. Train EPA About Tribal Management**

The Tribes will provide EPA with training and/or other information to facilitate EPA's

understanding of the Tribe's culture and its administrative/management requirements.

### **3. Other Federal Agencies, State, Regional and Local Governments.**

#### **a. Other Federal Agencies**

The Parties will work with other Federal agencies to carry out their relevant responsibilities, sharing and coordinating the collection of information that pertains to the human and environmental health both in and near the Colville Indian Reservation.

#### **b. Develop Relationships with Other Entities**

Efforts to implement environmental protection for ecosystems will guide the development of working relationships and procedures with federal, state, regional, county and local agencies.

#### **c. Assist in Educating Local Governments**

EPA may assist in the Tribes' environmental program initiatives by helping to educate local governments about this Agreement, the joint planning of environmental protection on the Reservation, jurisdiction issues, the trust responsibility, and other aspects of EPA's government-to-government relationship with the Tribes.

#### **d. Cooperative Agreements**

Upon the Tribes' request, EPA will provide technical assistance in developing environmental cooperative agreements with state, regional, and local governments.

### **4. Funding and Technical Assistance.**

Recognizing each of the Parties' resource limitations, the Parties will prioritize the environmental programs for which the Tribes seek financial assistance. EPA will endeavor, within the constraints of its resources, to provide technical and/or funding assistance requested by the Tribes for those priorities.

### **C. Communications**

The Parties agree that communications will be conducted as follows:

#### **1. Designated Key Contacts - Programmatic**

EPA has designated its Tribal Programs Coordinator (currently Larry Brockman) to serve as the primary contact for the Tribe. The Coordinator is responsible for assisting the Tribe, as necessary, in working with others throughout the Agency. The Tribal staff is free to communicate with staff persons at the EPA who are responsible for the relevant program or subject matter. In that instance, the EPA staff person is responsible for notifying the Tribal Coordinator of the communication so that

at least one person in the EPA has the "big picture" of all EPA-Tribes activities. Tribal staff and management should also feel free to contact the Regional Tribal Program Manager regarding programmatic concerns.

The Tribe has identified its Director of Environmental Trust (currently Gary Passmore) as Tribal staff person who will serve as the primary contact for the EPA on programmatic issues and concerns, including but not limited to program development and implementation, grants development, grants management and for whatever other purposes the Parties agree to.

## **2. Designated Key Contacts - Policy**

Tribal staff, management and government should feel free to contact the Regional Tribal Policy Director regarding policy matters. The Tribal Policy Director will provide timely policy information to the Tribe, either personally or through the Tribal Coordinator.

The Tribes will identify a tribal contact that the Regional Tribal Policy Director can call on for input on Regional tribal policy matters. When policy decisions that may impact the Tribal environment are being considered, the Tribal Policy Director will provide for meaningful Tribal government input, whenever possible.

## **3. Designated Key Contacts - Leadership**

The Chairman of the Colville Business Council always has the option of contacting the Regional Administrator and/or Deputy Regional Administrator if a situation arises which warrants their involvement.

## **D. Issue Resolution**

Both Parties will strive to address matters informally, at the staff level. In the event that staff are unable to resolve a dispute, the issue will be presented to immediate supervisors, who will attempt to resolve the dispute. If the dispute is not resolved, the staffs will present the matter to progressively higher levels of management until consensus is reached.

In the event consensus is not reached, the matter will be resolved by the Regional Administrator of the EPA and the Chairman of the Colville Business Council.

Other dispute mechanisms required by statute or regulation may apply to grants or program-specific issues.

## **IX. EFFECT OF THIS AGREEMENT**

This Agreement is intended solely to facilitate intergovernmental coordination between the

parties, and grants no rights in third parties nor any right of judicial review. This Agreement is not intended as an enforcement document, and the Tribes disclaims any responsibility to act as an enforcement agency. The parties do not, by entering into this Agreement, waive any rights, powers, immunities or remedies otherwise available.

## **X. DURATION, RENEWAL AND MODIFICATION**

### **A. Effective Date of Agreement**

This Agreement is effective upon the date of signature by both parties.

### **B. Duration & Renewal**

This Agreement is self-renewing and will remain in effect until terminated by mutual agreement of the Parties; provided, however, that any Party to this agreement may withdraw from this agreement by providing thirty (30) days written notice to the other Party. Unless otherwise specifically provided, termination of this agreement will not in any way affect program delegations, funding agreements, or any other agreements between the Parties.

### **C. Modification & Amendment**

This Agreement may be modified in writing upon the request of either party. All modifications must be mutually agreeable, in writing, and signed by the signatories or their duly appointed representatives. Each party will keep the other informed of proposed and enacted modifications to relevant statutory or regulatory authority, forms, procedures, or priorities. The parties will endeavor to negotiate and make modifications to this agreement where it appears appropriate to do so in light of any such proposed or enacted modifications.

## **XI. SOVEREIGNTY AND DISCLAIMER**

The parties to this Agreement recognize and respect the sovereignty and legal status of one another. The parties further recognize that each has and reserves all rights, powers, and remedies now or hereafter existing at law or in equity, or by statute, treaty or otherwise. This Agreement does not modify, diminish, or alter the rights and entitlement of the Parties. The Tribes' joinder to this Agreement shall not constitute a waiver of sovereign immunity by the Tribes. This Agreement does not modify or supersede agreements with other entities or other agreements with EPA unless expressly noted.

## **XII. SAVINGS CLAUSE**

If any provisions or elements of the Agreement are held or decided by law to be invalid, all

other provisions of the Agreement remain in full force and effect. If, in the interpretation of the Agreement, the parties have differing interpretations, an effort will be made to interpret the agreement in terms that are favorable to the protection of the Tribal environment.

**A. Regulatory Legislation**

If any provisions or elements of the Agreement are held legally or by regulatory legislation to be invalid, all other provisions of the Agreement remain in full force and effect.

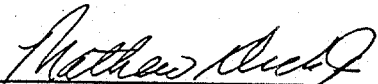
**B. Funding Legislation**

If any provisions or elements of the Agreement are held or decided by funding legislation to be invalid, all other provisions of the Agreement remain in full force and effect.

**C. State EPA Agreements**

Nothing in this Agreement is intended to abrogate agreements EPA has with other entities. Conversely, agreements between EPA and other entities shall not abrogate this Agreement. In the event EPA has entered into conflicting agreements, EPA will attempt to facilitate a resolution of the differences. Any elements of this Agreement that are designated as invalid shall not abrogate any provisions of the Agreement not in conflict with other EPA agreements.

FOR THE PARTIES

*for*   
\_\_\_\_\_  
Joseph A. Pakootas, Chairman

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chuck Clarke  
Regional Administrator  
Environmental Protection Agency,  
Region 10

\_\_\_\_\_  
Date